

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAWRENCE JONES,

Plaintiff, No. CIV S-03-0170 GEB DAD P

vs.

CONSTANCE CUMMINGS, et al.,

Defendants. ORDER

/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action in which he alleges that the defendants used excessive force in arresting him. On October 6, 2004, defendants' motion for judgment on the pleadings was granted and the case was dismissed without prejudice. On appeal, the district court's judgment has been vacated and the case has been remanded for consideration of plaintiff's allegations in light of the Ninth Circuit's recent decision in Smith v. City of Hemet, 394 F.3d 689 (9th Cir. 2005). (Ninth Circuit Order filed May 13, 2005, at 2.) The Ninth Circuit's judgment was entered on June 6, 2005.

The Court of Appeals found that plaintiff's complaint, "although vague and lacking detail, alleges that defendants used at least some force against [plaintiff] after he was constrained by handcuffs" and that the district court therefore "appears to have erred in dismissing [plaintiff's] action pursuant to Heck v. Humphrey." In accordance with the order of

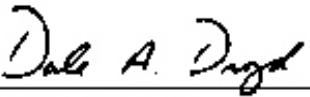
1 the Court of Appeals, plaintiff will be directed "to amend his complaint to provide more details
2 regarding the events giving rise to his excessive force claim" and to allege facts concerning the
3 events that formed the basis for his criminal plea under California Penal Code § 243(b) for
4 battery against an officer performing her duties. (Order filed May 13, 2005, at 2-3.)

5 Plaintiff is informed that an amended complaint must be complete in itself
6 without reference to the previous complaint. See Local Rule 15-220. The court cannot refer to
7 the prior pleading in order to make an amended complaint complete. The amended complaint
8 will supersede the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
9 Therefore, in an amended complaint, just as if it were the original complaint, each claim and the
10 involvement of each defendant must be sufficiently alleged.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Plaintiff's complaint is dismissed with leave to amend; and
13 2. Plaintiff is granted thirty days from the date of this order to file and serve an
14 amended complaint that complies with the requirements of the Civil Rights Act, the Federal
15 Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the
16 case number assigned to this case and must be labeled "Amended Complaint"; plaintiff must
17 serve a copy of his amended complaint on defendants' counsel and attach a proof of service to
18 the amended complaint submitted to the court for filing; failure to file and serve an amended
19 complaint in accordance with this order may result in a recommendation that this action be
20 dismissed for failure to comply with court orders and for lack of prosecution. See Local Rule 11-
21 110.

22 DATED: June 13, 2005.

23 
24 DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE
26

DAD:13
jone0170.14rem